

provisions of this Ordinance, but his wages shall for all the purposes of this Ordinance be deemed to be five hundred dollars a month:

Provided that a person engaged in employment in a resident medical capacity in approved hospitals or institutions with a view to registration under the Medical Registration Ordinance, 1952, shall not be deemed to be an employee for the purposes of this Ordinance during the period of such employment."

It is perfectly clear that clause (2), subject to the proviso, excludes all wage-earners from being employees for the purposes of the Ordinance if the wages paid exceeded \$500 a month. But the proviso makes an exception in the case of a wage-earner who is already an employee for the purposes of the Ordinance when he commences to draw a salary exceeding \$500.

It is, I think, accepted in principle that an employee continues to remain an "employee" for the purposes of the Ordinance irrespective of whether he changes his employer, or the nature of his employment or there is an interval of unemployment, as long as his salary is less than \$500 *per mensem*. It is also I think, not disputed that a contributor to the fund continues to be an employee even after he reaches, by virtue of periodic increments, a stage when his salary exceeds \$500 *per mensem*. The point that was canvassed before us is that these principles cease to apply when a contributor who had been in receipt of a salary of less than \$500 takes up a new appointment after a period of unemployment at a salary exceeding \$500 *per mensem* despite his continuance as a member of the Fund. On the very face of it, this argument appears illogical but I think it is also untenable by virtue of the provisions of section 13(2) of the Ordinance which make it clear that a member of the fund shall not be treated as an employee for the purposes of the Ordinance only if he withdraws any sum standing to his credit.

Mr. Kirpal Singh Brar is still a member of the fund and, therefore, as such, he must be deemed an "employee" for the purposes of the Ordinance during the period he worked for the respondent.

With regret, I cannot subscribe to the view that a narrow construction of clause (2) of the First Schedule might result in injustice to the employer. The Employees Provident Fund is essentially a social legislation enacted to benefit employees. That point is made clear in the definition of "approved fund" in section 2 of the Ordinance. Therefore, in my opinion, the proper approach to be made in construing the meaning of words and phrases in the Ordinance should be to give effect to the purposes of the Ordinance, i.e., to ensure that an employee is not deprived of his rights under the Ordinance.

With respect, I agree with the judgment of the learned Lord President. The appeal must, therefore, be allowed with costs.

A Since writing my judgment, I have read the addendum to his judgment by my brother Ong Hock Thye C.J. He has taken the point that if the 23 words in the proviso quoted by him are not a surplusage, then the proviso should be construed as conferring a discretion on the board to exclude an employee from the provisions of the Ordinance for any reason other than only that he had been a contributor to the fund under section 7 or would have been but for the relevant provisions of section 16 of the Ordinance.

B With the greatest respect, I am unable to subscribe to this view. The argument is based purely on the meaning of the word 'only' as defined by the *Shorter Oxford English Dictionary*. I think that in interpreting the meaning of a word, one must also look to the context in which it is used. If the sentence in which the word 'only' occurs had read: "... such employee shall not only by reason of this paragraph be deemed to have become excluded from the provisions of this Ordinance ...", I would have been inclined to agree that the proviso implied that an employee could be exempted for other reasons. But the relevant part of the sentence does not read "shall not only by reason of this paragraph" but "shall not by reason only of this paragraph". What therefore the proviso says is not that an employee could be exempted from the provisions of the Ordinance for other reasons but that an employee who had been a contributor under section 7 or would have been one but for section 16, cannot be excluded from the provisions of the Ordinance by reason only that he is in receipt of wages exceeding \$500 *per mensem*.

With respect, therefore, my judgment supporting the judgment of the learned president of the court must stand.

Appeal allowed.

G Solicitors: Shook Lin & Bok; R.R. Chelliah Bros.

WELFARE INSURANCE CO. LTD. v. MAIDIN BIN MANAP

H [F.C. (Azmi L.P., Ong Hock Thye C.J. (Malaya) and MacIntyre F.J.) January 24, 1969]

[K.L. — Federal Court Civil Appeal No. X.39 of 1968]

I *Arbitration — Award — Extension of time for making — Whether necessary to obtain order of court — Whether matter in dispute remitted to arbitrators — Meaning of "remit" — Arbitration Ordinance, 1950, ss. 5, 10 & 11.*

In this case the respondent had claimed damages against the appellants, his insurers for damage caused to his vehicle as a result of it having been involved in an accident. On the application of the appellant insurance company the High Court stayed proceedings and the matter was referred to arbitration. The arbitration proceedings were concluded on July 15, 1965

and the arbitrator made his award on December 23, 1965. The arbitrator had under the arbitration agreement extended the time for making the award to December 31, 1965. Under the award the appellants were awarded \$1,250 and costs and when the award was not complied with, they applied to enforce it. The learned trial judge held that as the award was made after the lapse of five months and not within three months required under section 11 of the Arbitration Ordinance, it was a nullity ([1968] 2 M.L.J. 47). The appellants appealed.

Held, allowing the appeal: section 10 of the Arbitration Ordinance was not applicable as the matter had not been remitted by the court to the arbitrator and therefore the award was valid and should be enforced.

FEDERAL COURT.

Wong Seng Chan for the appellants.

D.A. Devadason for the respondent.

Cur. Adv. Vult.

Azmi L.P.: In September 1963 the appellant insurance company issued to the respondent, Maidin, a comprehensive policy covering, among other things, loss or damage to his motor-car MA.5790, subject to the usual conditions and exceptions.

On 19th February 1964, whilst the policy was still in force, the said vehicle met with an accident as a result of which it was damaged and Maidin claimed against the insurance company in respect of the damage. Differences however, arose between the two parties as to the liability of the insurance company with the result that Maidin issued a writ out of the High Court at Malacca against the company.

On the application of the insurance company, under the provisions of section 5 of the Arbitration Ordinance, the High Court at Malacca stayed all proceedings.

The parties duly appointed an arbitrator who, after hearing both parties and witnesses made his award. The arbitration was concluded on 15th July 1965 but the arbitrator said he would give his award within one month. The arbitrator made his award on 23rd December 1965. According to him he had, however, on 12th October 1965, extended the time for making the award to 31st December 1965.

In his award the arbitrator held that Maidin was not entitled to recover any sum in respect of his claims against the insurance company and he thereupon awarded \$1,250 and costs against Maidin, which amount was exclusive of his fees as an arbitrator.

Maidin apparently failed to comply with the above award and the insurance company took out a summons to enforce it under section 13 of the Arbitration Ordinance.

Maidin's solicitors swore an affidavit among other things to the effect that when the purported award was published, a period of 5 months had lapsed from the last day of the

A reference and since the arbitrator had failed to enlarge the time beyond the period of 3 months within which time the arbitrator had to make his award as required by clauses (3) and (4) of the First Schedule of the Arbitration Ordinance, the award was therefore null and void.

B At the hearing of the summons the learned judge dismissed the insurance company's application. The learned judge on the facts of the case found that the arbitrator had extended the time of making the award to 31st December 1965.

C After referring to the provisions of section 10 and clause 3 of the First Schedule to the Arbitration Ordinance he came to the view that the main issue before him was whether or not the arbitrator had the power to extend the time for making the award in the manner he had done. The learned judge came to the conclusion that clause 3 of the Schedule should be read in the light of section 10, and that the net result would be that the enlargement of time for making an award beyond the statutory period of 3 months can only be made by the arbitrator in writing after obtaining the order of the court whether the time for making an award had expired or not. He then referred to the following paragraph 95 (at page 42) of Vol. 2 of *Halsbury's Laws of England*, 3rd Edn.:—

E "Except where an award is remitted by the court, when the new award must be made within three months of the order, and subject to anything to the contrary in the arbitration agreement, an arbitrator or umpire has power to make an award at any time."

F and went on to say:—

"The present dispute was remitted by the court for the decision of the arbitrator and therefore in my view the award must be made within three months from the date the arbitrator entered on the reference except in those cases where the time for making the award has been enlarged by the order of the court under section 10. The arbitration agreement in this case is also silent about the time for making the award. I therefore find in this case that the arbitrator had no power to enlarge the time for making the award arbitrarily."

G The learned judge then came to the view that the award having been made after the lapse of 5 months and not within 3 months, it was therefore a nullity.

H In my view, references to arbitration under our law may be one of two kinds, viz, (1) references by consent of parties out of court and (2) references remitted by the court.

I Section 5 of the Arbitration Ordinance provides that where a party to a submission, commences any legal proceedings against another party of the submission, the latter may before taking any other steps to the proceedings apply to the court for a stay of the proceedings and the court if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the submission and that the applicant

was willing to do all things necessary to the purported conduct of the arbitration, may make an order staying the proceedings. A "submission" is defined by the Ordinance as a written agreement to submit present or future differences to arbitration whether an arbitrator is named therein or not. Section 11 gives power to the court in all cases of reference to arbitration to remit the matters referred to for the re-consideration of the arbitrator or umpire. And where an award is remitted the arbitrator or umpire shall, unless the order otherwise directs, make their award within 3 months after the date of the order. Section 10 gives power to the court to enlarge the time for making an award whether the time for making an award has expired or not.

In my view, the reference in this case was a reference to arbitration made by the agreement of the parties themselves. Therefore, clause 3 of the first Schedule should apply and in the circumstances, the learned arbitrator had the power to extend the time for making his award as he had done. This reference is not, with respect, as the learned judge had stated, a dispute remitted by the court for the decision of the arbitrator, and of course if it had been such a case, then I would with respect agree that only the court may extend the time for making the award and under section 10, he could do so whether the original time given for making the award has expired or not. In England there is no time fixed for making an award out of court, as can be seen from the passage cited by the learned judge from *Halsbury* paragraph 95, page 42 of Vol. 2, 3rd Edition, which reads as follows:—

"Except where an award is remitted by the court when the new award must be made within three months of the order, and subject to anything to the contrary in the arbitration agreement, an arbitrator or umpire has power to make an award at any time."

In the circumstances I would therefore allow the appeal and direct that the award made by the arbitrator be enforced in the same manner as a judgment. I also award costs against Maidin here and in the court below.

Ong Hock Thye C.J. (Malaya): This appeal must be allowed with costs. The learned judge was manifestly in error, as was learned counsel for the respondent, for the word "remit" bears a special meaning in the Arbitration Ordinance, as it does in the English Arbitration Act. It means to "send back for reconsideration and re-determination": see 2 *Halsbury*, 3rd Edn., paragraph 121; *Russell on Arbitration*, 17th Edn., p. 305. In the instant case, the matter in dispute had never been "remitted", in that sense, by the court to the arbitrator.

The order of the court below is accordingly set aside and the application of the appellant granted as prayed for enforcement of the award.

MacIntyre F.J. concurred.

Appeal allowed.

Solicitors: *Shearn, Delamore & Co.; D.A. Devadason.*

PUBLIC PROSECUTOR v. LEE HOR SAI

[R.Cr.J. (Ong Hock Sim J.) March 28, 1969]
[Penang — Criminal Revision No. 4 of 1969]

Penal Code, s. 326 — Voluntarily causing grievous hurt by dangerous weapons or means — Permanent disfiguration of head or face — Trial before magistrate a nullity — Preliminary inquiry — No bail pending.

The accused was convicted by the learned magistrate on his own plea of guilty to a charge for voluntarily causing hurt to a girl by means of a knife and sentenced to a fine of \$250. He had slashed the face of the girl on the left and right cheeks some 3 or 4 times.

Held: under the Penal Code, where there is permanent disfiguration of the head or face the offence should be one of grievous hurt and the charge framed under section 326. The trial of the accused before the learned magistrate therefore was a nullity because the charge under section 326 carries a term which may extend to life, or 10 years and shall also render him liable to whipping.

CRIMINAL REVISION.

K.C. Vohrah (Deputy Public Prosecutor) for the Public Prosecutor.

David Choong for the accused.

Ong Hock Sim J.: The accused in this case was convicted by the learned magistrate on his own plea of guilty to a charge for voluntarily causing hurt to one Teoh Gaik Nai (f) by means of a knife and sentenced to a fine of \$250. He slashed the face of the girl, the said Teoh Gaik Nai, on the left and right cheeks some 3 or 4 times.

I have examined the girl and I am satisfied that the scars on her face are permanent. I am, however, sending her for medical examination. Under the Penal Code, where there is permanent disfiguration of the head or face the offence should be one of grievous hurt and the charge framed under section 326 of the Penal Code. The trial before the learned magistrate therefore is a nullity because the charge under section 326 carries a term which may extend to life, or ten years, and shall also render him liable to whipping.

I therefore set aside the order of the learned magistrate fining him \$250. I order that he be re-arrested and charged under section 326 of the Penal Code. There should be a preliminary enquiry with a view to committal to the High Court for trial. There will be no question of bail being granted pending the preliminary enquiry.

Order accordingly.

Solicitors: *Lim, Lim & Oon.*